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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")¹ hereby submits its comments to the Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry.² NAB is a party to and fully supports the comments that are being filed by the "Joint Broadcasters"³ in this proceeding. In this pleading, NAB offers expanded exposition of NAB's views on: (a) a regulatory requirement mandating a minimum amount of HDTV programming, (b) simulcasting requirements, (c) ATV construction deadlines, and (d) ATV service over cable.

I. A Requirement For Broadcasters To Provide A Minimum Amount Of HDTV Programming On The ATV Channel Is Unnecessary.

NAB is not supportive of government-mandated minimums of HDTV-quality programming, or of any other particular format, quality or content, for the ATV channel. The driving force behind the transition to ATV is the need to deliver television programming that viewers want and will watch and that is competitive with other media offerings. Broadcasters

¹ NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major networks.

² Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry MM Docket No. 87-268, 10 FCC Rcd 8700 (1995). (Fourth NPRM & Third NOI)

³ NAB along with other broadcast trade associations and broadcaster organizations are submitting joint comments ("Joint Broadcasters") in the instant proceeding.

will respond to the needs of the viewers and to all competitive challenges, if they have the latitude to do so. By providing maximum latitude, the Commission will encourage development of diverse new programming services that will facilitate the most rapid acceptance of ATV and lead to the most rapid return of NTSC spectrum. Surely, HDTV programming will be a significant, or even dominant, element of the business strategy of most broadcasters. However, the ultimate value of HDTV to consumers is not known. Mandating a certain amount of HDTV programming now, with little evidence supporting its likely attraction, could impair broadcasters' ability to rapidly fuel development of the ATV market with complementary program offerings. Neither the quality level nor the content of the ATV signal should be regulated.

History is full of examples where the vitality of the marketplace results in unexpected demand for unpredicted services. The unforeseen video tape rental business was the innovation that pushed VCR acceptance into the mainstream. Sales of VCRs were slow until 1978, when the new business of low-cost rental of pre-recorded programs came into being. The 1% VCR penetration point was passed about a year later.⁴ VCR penetration rose rapidly thereafter and is now at 85% of homes.⁵ The availability of many, inexpensive program choices for the consumer was the driving force for acceptance of this new technology.

The facsimile machine evolved from a slow, special purpose device to become the foundation for businesses which provide fast, mass distribution of messages. In retrospect, one can see how data compression techniques and modem coding advances contributed to this new use of technology, but the use was not obvious at the outset.

⁴ PS/WP-5 Market Penetration Report, June 20, 1992, p.9.

⁵ EIA CE News, August 1995.

Another unforeseen (and unforeseeable) development may be the catalyst that facilitates marketplace acceptance of ATV. HDTV offers an outstanding quality improvement opportunity, but the initial cost of receivers may be too high for rapid set sales. If HDTV acceptance is slow, other ways to exploit the technology may emerge to attract consumers. For example, a three-D enhancement of a SDTV program might offer appeal to the public. Delivery of multiple SDTV programs, either with related or independent content, may be the most successful in getting audience attention. A service that delivers two channels of a higher quality picture than SDTV, but lower than HDTV, may turn out to be the marketplace's cost-benefit point. Direct delivery of supplemental subscription services to consumers could help pay for the transmission capability in the initial period and help enable continued quality improvements later. If a certain amount of HDTV programming were required, these options would be precluded during the time periods when HDTV is being broadcast, even if these options were more highly desired and embraced by the public.

HDTV is an exciting technology and NAB enthusiastically encourages its deployment in the marketplace. Unfortunately, predicting winners and losers in mass media services is a difficult and risky proposition. Other exciting technologies have failed in the marketplace. If viewers support HDTV, broadcasters will serve them with high quality and varied HDTV programming. While the vast majority of broadcasters undoubtedly will present a substantial amount of HDTV programming, they and the viewers should be the ones to determine how much and when HDTV programming will be broadcast. Fixed rules about minimum quantity of HDTV are simply unwarranted and potentially could delay the ultimate return of NTSC spectrum by elongating the transition period.

While NAB does not support minimum of HDTV programming regulations on point of principle as well as out of concern for the emerging ATV service, we understand there are many factors to be weighed in this regard. And we appreciate that many broadcast entities do not oppose minimums because broadcasters most certainly *will* present full HDTV programming, irrespective of government mandate. If, on balance, the Commission decides that a mandate for a minimum amount of HDTV programming is necessary to the overall ATV implementation process, NAB will continue to urge broadcasters to vigorously roll out ATV service with this constraint in place.

II. Simulcasting Requirements Are Undesirable, Unnecessary And An Obstacle To Rapid Marketplace Penetration Of ATV Service.

A simulcasting requirement is neither necessary nor conducive to the most rapid ATV transition. The surest way to hasten the transition to digital television is to give consumers enhanced programming offerings on the new ATV channel. To say that people watch programs and not technology is almost a cliché. Yet given this self evident, reality-based fact, it is not at all presumptuous to suggest that many consumers' decisions to spend a thousand dollars or more on a new ATV set will depend in great part on the programs presented on that new set. The availability of compelling programs that are not available via the traditional NTSC service well may tip the scales towards purchasing that new set. A simulcast restriction would inhibit the programming possibilities that could sell ATV sets, hasten the transition and lead to a free universally available HDTV/ATV future for all Americans. The FCC should *enable* the marketplace transition -- not inhibit it with restrictions.

In a somewhat analogous proceeding, the Commission opposed simulcasting, in part to help stimulated the purchase of new receivers. In 1964 the Commission issued an order to

prohibit simulcasting of more than 50% of the programs on AM stations on the new FM stations to facilitate the growth of the new FM stations.⁶ The Commission stated that this limit on simulcasting was intended to encourage the purchase of the new FM receivers and reduce the inefficiency of spectrum usage from co-located stations.⁷ NAB, of course, is not suggesting a prohibition on simulcasting in the current proceeding, but the market factors at play in the ATV transition are strikingly similar to those of the FM situation.

NAB believes that the most rapid ATV transition will take place with broadcasters having maximum flexibility to explore the new medium and to find, through unrestricted experimentation, which service offerings will be enticing enough to sell and satisfy the viewing audience. This is especially true with regard to HDTV, the impressive capabilities of which are best showcased with certain types of programming and the benefits of which are entirely lost with other types of programming. Programming that motivates the consumer to want to view the ATV signal stands the greatest chance of obtaining public support for an entirely new television system.

On the other hand, a backlash from consumers who feel that, after paying considerably more for new ATV receivers, they are getting only the same programming could depress the exciting prospects of the new service and delay significantly, if not doom, its acceptance. Rather than interfering with marketplace dynamics at the sensitive early stages, the Commission should simply be silent with regard to simulcasting, and let broadcasters do what they do best -- provide programming that attracts viewers. Such a marketplace approach will lead to the most rapid development of a vibrant market and result in a faster ATV transition and consequent faster recovery of NTSC spectrum.

⁶ Report and Order in Docket 15084, 45 FCC 1515 (1964).

⁷ Id., at 1530-34.

While NAB believes that a simulcast requirement may be counterproductive in the early stages of the ATV transition, NAB acknowledges that a simulcasting requirement near the end of the transition period could be an effective means of preventing disenfranchisement of the remaining NTSC viewers. However, here it is key that simulcasting be defined as the Commission defined it in 1992: "that ATV licensees should simulcast on their NTSC stations the programming offered on their ATV stations."⁸ A phasing-in of this simulcasting requirement toward the end of the transition may, in fact, protect the remaining NTSC viewers. When most of a station's or network's creative and economic resources are being applied to excelling and competing in the ATV medium, as would be the case near the end of the transition, simulcasting would make the excellent programs on the ATV channel available to NTSC viewers.

Since this scenario would probably be the natural course for broadcasters' business strategies anyway, a simulcasting requirement of this type hardly seems necessary, but probably would not frustrate public policy or business goals. In any case, simulcasting is not necessary in the early transition years and decisions on the specific details of far-end simulcast requirements would be premature at this time. Experience with the yet-to-come ATV/NTSC marketplace will be needed to make decisions that best serve the public interest.

III. Deadlines For Construction Of ATV Facilities Should Be Staggered On A Market-By-Market Basis.

A compressed, uniform schedule for all stations to complete construction of ATV facilities, as is proposed by the Commission, ignores the realities of operating television stations in smaller versus larger markets. NAB fears, as noted in its June 22, 1992, Petition for

⁸ Supra, Fourth NPRM & Third NOI, at 16.

Partial Reconsideration of the FCC's Second Report and Order in this proceeding, that the transition process could be hobbled, and even halted by en masse extension requests, incapable equipment markets, artificially high equipment costs, insufficient personnel resources, and avoidable bankruptcies. An orderly and successful transition to ATV could thus be sacrificed and defeated by not staggering the establishment of this new service by market size. Smaller market stations are especially in need of as much consideration and latitude as possible in their transition process. Multiple parties to these proceedings have warned the Commission that the previously announced deadlines are unrealistic and impractical for all stations in all markets.⁹

Most stations in the top markets can be expected to be the leaders of the fledgling ATV industry. These stations will be the pioneers, blazing the trail for the rest of the industry. They are better situated to accept more business risk and early stage costs as they establish the first commercial ATV stations. A target construction period of six years from the establishment of a standard and a final table of assignments for the large market stations should be workable.

Stations in smaller markets generally have less financial resources and less revenue than those in larger markets. Smaller market stations will be more likely to begin their ATV service successfully by learning from the experience gained by the top market stations who can afford more risk and experimentation in search of meeting marketplace expectations. Market-by-market staggering would help keep costs lower for financially-challenged smaller market stations, as equipment costs will decrease as the market matures, and the cost for new facilities

⁹ The Implementation Subcommittee of the FCC Advisory Committee on Advanced Television Service (FCC ACATS) recommended ATV implementation rules and policies urging staggered implementation, as submitted in its Fifth Interim Report to the FCC ACATS, as Attachment A, Reducing Costs and Delays in Broadcast ATV Implementation, (Doc. IS/WP1-0049 dated 13 Feb., 1992 at Section III). This attachment is the result of intensive discussions by the Implementation Subcommittee on this issue. See also, the Contribution to the Final Report of the Implementation Subcommittee and Final Report of Working Party 2 on Transition Scenarios, dated December 17, 1992, and a CBS Study- Document Number ISWP2-0102.

can be spread out over more years. For these reasons, longer deadlines than the proposed six years are warranted for smaller market stations. Extending the deadline for an additional three years for stations in a second tier of markets after markets 1-10, and an additional three years beyond that for stations in the smallest markets would be a more realistic roll-out scenario.

Extensions due to circumstances beyond the control of broadcasters such as local zoning and various other required approvals should be available as well.

IV. The ATSC Digital ATV Standard Should Be Mandated For Digital Transmission Over Cable Systems.

The Commission has requested comment on the relationship of the ATV signal standard as it relates to cable systems.¹⁰ On several occasions during this proceeding, beginning with its initial 1987 Notice of Inquiry into Advanced Television, the FCC has noted the value of a universal digital standard for ATV providers:

- In the Tentative Decision and Further Notice of Inquiry in MM Docket No. 87-268, 3 FCC Rcd. 6520 (1988) the Commission said that service providers will be interested in attaining the largest market possible, a goal that may be more achievable if a high degree of interoperability is provided.
- In the First Report and Order in MM Docket No. 87-268, 5 FCC Rcd. 5627 (1990), the Commission stated as its primary goal in the proceeding the development of a technically excellent ATV service that will most efficiently meet the needs of terrestrial broadcasters, cable television operators, and most of all, consumers.
- In the Second Report and Order and Further Notice of Proposed Rule Making in MM Docket 87-268, 7 FCC Rcd. 3340 (1992), the Commission said that cable delivery of a quality ATV signal is critical to public acceptance of ATV. Accordingly, any ATV system selected must support ATV carriage over cable systems.
- In the Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making in MM Docket 87-268, 7 FCC Rcd. 6924 (1992) compatibility with cable and VCRs was seen as most important among non-broadcast media. The Commission endorsed the efforts of the Advisory Committee to ensure that the system ultimately selected as the ATV standard performs satisfactorily for both broadcast and cable operations.

¹⁰ Supra, Fourth NPRM & Third NOI, at ¶ 79.

- The Commission has also addressed the issue of a broadcast/cable standard in its First Report and Order, ET Docket No. 93-7, 9 FCC Rcd. 1981 (1994), regarding the Compatibility Between Cable Systems and Consumer Electronics Equipment, pursuant to the Cable Television Consumer Protection and Competition Act of 1992. In discussing the impact of future technologies, including ATV, the FCC said that it will be necessary to standardize the system of digital transmission methods used in the cable industry. In addition, the FCC noted that the development of any digital cable standard must also consider other policy issues including the relationship of the cable system to the terrestrial broadcast ATV standard.

The public policy interest in compatibility between the broadcast and cable services has resulted in a common ATV technical standard that has been optimized for use by both broadcast and cable providers. The ATV standard¹¹ that will be considered for recommendation to the FCC by the FCC Advisory Committee on Advanced Television Service at their November 28 meeting was developed with cable compatibility in mind and includes a special transmission mode for high capacity transmission in the cable environment.

NAB urges the Commission to mandate that cable systems use this ATV standard¹² for carriage of all ATV signals. The work of the Grand Alliance, in conjunction with the efforts of the FCC Advisory Committee and the Advanced Television Systems Committee (ATSC), has resulted in a technical solution that marries cable and broadcast transmission modes seamlessly and avoids the pitfalls of incompatibility that were so difficult to resolve in the analog world.

By requiring that the ATSC ATV standard be used by cable for digital transmission, the Commission would pave the way for making cable-ready ATV sets available to consumers, which is consistent with the goals of the Cable Act of 1992.¹³ If cable systems are permitted to use other transmission systems to deliver digital television, consumers will be forever locked

¹¹ United States Advanced Television System Committee, Digital Television Standard, Document No. A/53, September 16, 1995.

¹² Id.

¹³ See 47 U.S.C. § 624A.

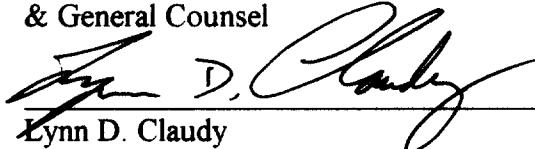
into using, and paying for, set-top boxes from the cable companies. Without common standards, cable-ready ATV sets would need to be capable of receiving and decoding two (or more) digital transmission formats. The attendant increased cost and complexity of such an arrangement would effectively prevent digital cable-ready ATV receivers from achieving prevalence in the marketplace, if developed and marketed at all. Technical compatibility between consumer equipment and cable systems was found to be a serious deficiency in our current analog world and the Commission's efforts in bringing the two industries together for the benefit of the public were successful and worthy of high praise. The issue of technical compatibility in the digital world is no less difficult and certainly just as important. Mandating the use of the ATSC ATV standard for cable applications is appropriate, logical, and best for the public.

Respectfully submitted,

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